

Organizations that make application to the Department and are determined to be exclusively religious, educational, or charitable receive an exemption identification number. Organizations that have exemption identification numbers are allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005. (This is a GIL).

October 31, 2000

Dear Ms. Xxxxx:

This letter is in response to your letter dated October 1, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Web site at www.revenue.state.il.us/legalinformation/regs/part1200.

In your letter, you have stated and made inquiry as follows:

Our company is engaged in the solicitation of wholesale sales to schools, and other organizations in connection with fund-raising projects. Our tax permit #####. We would like to update our enclosed records to assure we are following your state's guidelines with regard to sales tax on products sold for fund-raising purposes.

All orders are received in and are subject to acceptance at our location in CITY/STATE. All merchandise is shipped to the organizations directly from our CITY/STATE warehouse or our CITY/STATE2 warehouse.

Current products include candy, cookies, nuts, summer sausage, cheese, Christmas wrap and ornaments, cookbooks, flower bulbs, suntan and bath oils, candles and other small gift items. Some food containers are tin, plastic or glass.

Thank you for sending me a written confirmation that our interpretation is correct at this time. It can be mailed to the below address, faxed to #####

Organizations that make application to the Department of Revenue and are determined to be exclusively religious, educational, or charitable, receive an exemption identification number (an "E" number). See the enclosed copy of 86 Ill. Adm. Code 130.2007. This number evidences that the Department recognizes the organizations as exempt from incurring Use Tax when purchasing tangible personal property in furtherance of their organizational purposes. If an organization does not have an E number, then its purchases are subject to tax. Please be aware that only sales to organizations holding the E number are exempt, not sales to individual members of the organization.

Organizations that have E numbers are also allowed to engage in a very limited amount of retail selling without incurring Retailers' Occupation Tax liability. These limited amounts of selling are described in the enclosed copy of 86 Ill. Adm. Code 130.2005(a)(2) through (a)(4). An exempt organization may engage in sales to members, noncompetitive sales, and certain occasional dinners and similar activities (two fundraisers a year) without incurring Retailers' Occupation Tax liability. In regard to sales to members, please note that the population to which sales are made is limited to persons specifically associated with that exempt organization and must be for the primary purpose of the selling organization. Organizations could use their "E" numbers to purchase items for such limited exempt sales. However, if organizations engage in ongoing selling activities (such as Little League concession stands or sales of items in a thrift shop run by a church), they must also register with the Department as retailers, file returns and remit tax. For these types of ongoing sales, the organizations would provide their suppliers with Certificates of Resale for the items they purchase to resell and remit Retailers' Occupation Tax on their gross receipts from sales. See 86 Ill. Adm. Code 130.1405, enclosed, which describes the requirements for validly executed Certificates of Resale.

Under the provisions of Section 2-5(33) of the Retailers' Occupation Tax Act, gross receipts from proceeds from the sale of personal property, including food, purchased through fundraising events for the benefit of a public or private elementary or secondary school, a group of those schools, or one or more school districts if the events are sponsored by an entity recognized by the school district that consists primarily of volunteers and includes parents and teachers of the school children are exempt from Retailers' Occupation Tax. However, this exemption does not apply to fundraising events (i) for the benefit of private home instruction or (ii) for which the fundraising entity purchases the personal property sold at the events from another individual or entity that sold the property for the purpose of resale by the fundraising entity and that profits from the sale to the fundraising entity. 35 ILCS 120/2-5(33) (1998 State Bar Edition); see also 86 Ill. Adm. Code 130.120 and the Department's proposed regulation, 86 Ill. Adm. Code 130.2009, published at 24 Ill. Reg. 7470, Issue #21, 5/19/00 (currently being prepared for adoption).

As stated above, the exemption under Section 2-5(33) of the Retailers' Occupation Tax Act does not apply to situations in which the fundraising group purchases items that it will in turn sell from a supplier who sells the items to the fundraising group for the purpose of resale and profits from the sale to the fundraising group. Therefore, we doubt the exemption generally applies to your situation.

Sales by teacher-sponsored student organizations affiliated with an elementary or secondary school located in Illinois are also exempt from Retailers' Occupation Tax. See the enclosed copy of 86 Ill. Adm. Code 130.2006. These organizations provide their suppliers with Certificates of Resale when purchasing tangible personal property for resale. The groups themselves, the schools, the school districts, or the district treasurers must apply to the Department for reseller numbers to provide vendors in conjunction with Certificates of Resale when purchasing tangible personal property for resale. The students may then engage in unlimited amounts of selling without incurring Retailers' Occupation Tax liability.

Certain State licensed day care centers operated by not-for-profit organizations have been issued exemption numbers by the Department pursuant to a provision in 35 ILCS 120/2h under which

they can qualify as exclusively educational. Consequently, some day care organizations can submit evidence of an E number to make certain purchases of tangible personal property tax-free for their own use. Selling by such organizations would fall under the same rules as explained above. Non-exempt day care groups that purchase products for fund-raising purposes must submit a properly completed Certificate of Resale in order to make such purchases tax-free.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.